

AMENDED IN SENATE FEBRUARY 18, 2014

**SENATE BILL**

**No. 896**

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**Introduced by Senator Correa**

January 13, 2014

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An act to add Sections 22066 and 22067 to the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 896, as amended, Correa. Finance lenders: nonprofit organizations: zero interest loans: exemptions.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Business Oversight who is the chief officer of the Department of Business Oversight.

Existing law prohibits a person from engaging in the business of a finance lender or broker without obtaining a license from the commissioner. Under existing law, a finance lender includes any person who is engaged in the business of making consumer loans or making commercial loans and the business of making those loans includes lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission. Under existing law, a broker includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender.

Existing law makes certain persons and entities exempt from, or not subject to, the law if certain requirements are met. In any proceeding, under this law, the burden of proving an exemption is upon the person or entity claiming it.

This bill would make exempt from this law a nonprofit organization that facilitates one or more zero interest loans with a minimum principal amount upon origination of \$250 and a maximum principal amount upon origination of \$2,500 if certain requirements are met, including, among other things, that the organization is exempt from federal income taxes, no part of the net earnings of the organization inures to the benefit of private persons, and that the loan terms meet certain requirements. The bill would authorize any organization wishing to operate pursuant to an exemption to file a specified application with, and pay a fee in an amount to be determined by, the commissioner. The bill would authorize the commissioner to refuse to grant an exemption, or to suspend or revoke an exemption, if he or she makes a specified finding and finds that such action is in the best interests of the public.

The bill would require an organization granted an exemption, referred to as an exempt organization, to, among other things, offer a borrower a voluntary credit education program or seminar at no cost to the borrower, report each borrower's payment performance to at least one consumer reporting agency, and underwrite each loan and ensure that a loan is not made if the organization determines that the borrower's total monthly debt service payments exceeds a specified amount.

This bill would make the law inapplicable to a nonprofit organization that partners with an exempt organization for the purpose of facilitating zero interest loans, if certain requirements are met, including, but not limited to, that this nonprofit organization, to be known as the partnering organization, meet specified requirements for federal income tax exemption, that no part of the net earnings of the organization shall inure to the benefit of private persons, and that the loan terms meet certain requirements. The bill would require the partnership of each exempt organization and each partnering organization to be formalized through a specified written agreement to be provided to the commissioner upon his or her request.

The bill would require each exempt organization to provide the commissioner with notice and certain information upon entering into a written agreement with a partnering organization. Upon a determination that a partnering organization has acted in violation of certain requirements, the bill would authorize the commissioner to,

among other things, disqualify that partnering organization from facilitating zero interest loans, bar that partnering organization from performing services at one or more specific locations, terminate a written agreement, and prohibit the use of that partnering organization by all organizations granted exemptions if the commissioner determines it is in the public interest.

The bill would authorize the commissioner to examine each exempt organization and each partnering organization for compliance with these provisions upon reasonable notice. The bill would require any examined organization to make available to the commissioner all books and records requested by the commissioner. The bill would require the cost of any such examination to be paid by the exempt organization.

The bill would require every exempt organization whose exemption is approved to file an annual report with the commissioner on or before March 15 containing specified information. The bill would also require an exempt organization to include information regarding the loans facilitated by a partnering organization in this annual report.

On or before July 1 annually, the bill would require the commissioner to post a report on the department's Internet Web site that summarizes information relating to exempt organizations, partnering organizations, and the facilitation of these zero interest loans including that information compiled by the commissioner from the annual reports submitted by the exempt organizations.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 22066 is added to the Financial Code, to
- 2 read:
- 3 22066. (a) The Legislature finds and declares that nonprofit
- 4 organizations have an important role to play in helping individuals
- 5 obtain access to affordable, credit-building small dollar loans.
- 6 California law should refrain from creating statutory barriers that

1 risk slowing the growth of these loans. This section shall be  
2 liberally construed to encourage nonprofit organizations to help  
3 facilitate the making of zero-interest loans, through lending circles  
4 and other programs and services that allow individuals to establish  
5 and build credit histories or to improve their credit scores.

6 (b) For the purposes of this section, an organization described  
7 in subdivision (c) shall be known as an exempt organization, and  
8 an organization described in subdivision (d) shall be known as a  
9 partnering organization.

10 (c) There shall be exempted from this division a nonprofit  
11 organization that facilitates one or more zero-interest loans,  
12 provided all of the following conditions are met:

13 (1) The organization is exempt from federal income taxes under  
14 Section 501(c)(3) of the Internal Revenue Code and is organized  
15 and operated exclusively for one or more of the purposes described  
16 in Section 501(c)(3) of the Internal Revenue Code.

17 (2) No part of the net earnings of the organization inures to the  
18 benefit of a private shareholder or individual.

19 (3) No broker's fee is paid in connection with the making of  
20 the loan that is facilitated by the organization.

21 (4) Any organization wishing to operate pursuant to an  
22 exemption granted under this section shall file an application for  
23 exemption with the commissioner, in a manner prescribed by the  
24 commissioner, and shall pay a fee to the commissioner, in an  
25 amount calculated by the commissioner to cover his or her costs  
26 to administer this section and Section 22067. The commissioner  
27 may refuse to grant an exemption, or to suspend or revoke a  
28 previously issued exemption if he or she finds that one or more of  
29 the provisions of this section were not met or are not being met  
30 by the organization and that denial, suspension, or revocation of  
31 the exemption is in the best interests of the public.

32 (5) Every organization whose exemption is approved by the  
33 commissioner shall file an annual report with the commissioner  
34 on or before March 15 of each year, containing relevant information  
35 that the commissioner reasonably requires concerning lending  
36 facilitated by the organization within the state during the preceding  
37 calendar year at all locations at which the organization facilitates  
38 lending. The commissioner shall compile the information submitted  
39 pursuant to this paragraph for use in preparing the report required  
40 by Section 22067.

1 (6) Any loan made pursuant to this section shall comply with  
2 the following requirements:

3 (A) The loan shall be unsecured.

4 (B) No interest may be imposed.

5 (C) An administrative fee may be charged in an amount not to  
6 exceed the following:

7 (i) Seven percent of the principal amount, exclusive of the  
8 administrative fee, or ninety dollars (\$90), whichever is less, on  
9 the first loan made to a borrower.

10 (ii) Six percent of the principal amount, exclusive of the  
11 administrative fee, or seventy-five dollars (\$75), whichever is less,  
12 on the second and subsequent loans made to that borrower.

13 (D) An organization shall not charge the same borrower an  
14 administrative fee more than once in any four-month period. Each  
15 administrative fee shall be fully earned immediately upon  
16 consummation of a loan agreement.

17 (E) Notwithstanding subdivision (a) of Section 22320.5 and in  
18 lieu of any other type of delinquency fee or late fee, an organization  
19 may require reimbursement from a borrower of up to ten dollars  
20 (\$10) to cover an insufficient funds fee incurred by that  
21 organization due to actions of the borrower. No organization shall  
22 charge more than two insufficient funds fees to the same borrower  
23 in a single month.

24 (F) The following information shall be disclosed to the consumer  
25 in writing, in a typeface no smaller than 12-point type, at the time  
26 of the loan application:

27 (i) The amount to be borrowed, the total dollar cost of the loan  
28 to the consumer if the loan is paid back on time, including the sum  
29 of the administrative fee and principal amount borrowed, the  
30 corresponding annual percentage rate, calculated in accordance  
31 with Federal Reserve Board Regulation Z (12 C.F.R. 226.1), the  
32 periodic payment amount, the payment frequency, and the  
33 insufficient funds fee, if applicable.

34 (ii) An explanation of whether, and under what circumstances,  
35 a borrower may exit a loan agreement.

36 (G) The loan shall have a minimum principal amount upon  
37 origination of two hundred fifty dollars (\$250) and a maximum  
38 principal amount upon origination of two thousand five hundred  
39 dollars (\$2,500), and a term of not less than the following:

1 (i) Ninety days for loans whose principal balance upon  
2 origination is less than five hundred dollars (\$500).

3 (ii) One hundred twenty days for loans whose principal balance  
4 upon origination is at least five hundred dollars (\$500), but is less  
5 than one thousand five hundred dollars (\$1,500).

6 (iii) One hundred eighty days for loans whose principal balance  
7 upon origination is at least one thousand five hundred dollars  
8 (\$1,500).

9 (H) The loan shall not be refinanced.

10 (I) Neither the organization nor any of its wholly owned  
11 subsidiaries shall attempt to collect a delinquent payment for a  
12 period of at least 30 days following the start of the delinquency  
13 before selling or assigning that unpaid debt to an independent party  
14 for collection.

15 (7) Prior to disbursement of loan proceeds, the organization  
16 shall either (A) offer a credit education program or seminar to the  
17 borrower that has been previously reviewed and approved by the  
18 commissioner for use in complying with this section, or (B) invite  
19 the borrower to a credit education program or seminar offered by  
20 an independent third party that has been previously reviewed and  
21 approved by the commissioner for use in complying with this  
22 section. ~~The borrower shall not be required to participate in either~~  
23 ~~of these education programs or seminars.~~ A credit education  
24 program or seminar offered pursuant to this paragraph shall be  
25 provided at no cost to the borrower.

26 (8) The organization shall report each borrower's payment  
27 performance to at least one consumer reporting agency that  
28 compiles and maintains files on consumers on a nationwide basis,  
29 upon acceptance as a data furnisher by that consumer reporting  
30 agency. For purposes of this section, a consumer reporting agency  
31 that compiles and maintains files on consumers on a nationwide  
32 basis is one that meets the definition in Section 603(p) of the  
33 federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)). Any  
34 organization that is accepted as a data furnisher after being granted  
35 an exemption by the commissioner pursuant to this subdivision  
36 shall report all borrower payment performance since its inception  
37 of lending under the program, as soon as practicable after its  
38 acceptance into the program, but in no event more than six months  
39 after its acceptance into the program.

(9) The organization shall underwrite each loan and shall ensure that a loan is not made if, through its underwriting, the organization determines that the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit that can be independently verified by the organization, exceed 50 percent of the borrower's gross monthly household income except as specified in clause (iii) of subparagraph (D).

(A) The organization shall seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The organization shall verify that information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

(B) The organization shall also request from the borrower and include all information obtained from the borrower regarding outstanding deferred deposit transactions in the calculation of the borrower's outstanding debt obligations.

(C) The organization shall not be required to consider, for purposes of debt-to-income ratio evaluation, loans from friends or family.

(D) The organization shall also verify the borrower's household income that the organization relies on to determine the borrower's debt-to-income ratio using information from any of the following:

(i) Electronic means or services that provide reliable evidence of the borrower's actual income.

(ii) Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(iii) A signed statement from the borrower stating sources and amounts of income, if the borrower's actual income cannot be independently verified using electronic means or services, Internal Revenue Service forms, tax returns, payroll receipts, bank statements, or other third-party documents. If income is verified using a signed statement from a borrower, a loan shall not be made

1 if the borrower's total monthly debt service payments, at the time  
2 of loan origination, including the loan for which the borrower is  
3 being considered, and across all outstanding forms of credit, exceed  
4 25 percent of the borrower's gross monthly household income.

5 (10) The organization shall notify each borrower, at least two  
6 days prior to each payment due date, informing the borrower of  
7 the amount due and the payment due date. Notification may be  
8 provided by any means mutually acceptable to the borrower and  
9 the organization. A borrower shall have the right to opt out of this  
10 notification at any time, upon electronic or written request to the  
11 organization. The organization shall notify each borrower of this  
12 right prior to disbursing loan proceeds.

13 (11) Notwithstanding Sections 22311 to 22315, inclusive, no  
14 organization, in connection with, or incidental to, the facilitating  
15 of any loan made pursuant to this section, may offer, sell, or require  
16 a borrower to contract for "credit insurance" as defined in  
17 paragraph (1) of subdivision (a) of Section 22314 or insurance on  
18 tangible personal or real property of the type specified in Section  
19 22313.

20 (12) No organization shall require, as a condition of making a  
21 loan, that a borrower waive any right, penalty, remedy, forum, or  
22 procedure provided for in any law applicable to the loan, including  
23 the right to file and pursue a civil action or file a complaint with  
24 or otherwise communicate with the commissioner or any court or  
25 other public entity, or that the borrower agree to resolve disputes  
26 in a jurisdiction outside of California or to the application of laws  
27 other than those of California, as provided by law. Any waiver by  
28 a borrower must be knowing, voluntary, and in writing, and  
29 expressly not made a condition of doing business with the  
30 organization. Any waiver that is required as a condition of doing  
31 business with the organization shall be presumed involuntary,  
32 unconscionable, against public policy, and unenforceable. The  
33 organization has the burden of proving that a waiver of any rights,  
34 penalties, forums, or procedures was knowing, voluntary, and not  
35 made a condition of the contract with the borrower.

36 (13) No organization shall refuse to do business with or  
37 discriminate against a borrower or applicant on the basis that the  
38 borrower or applicant refuses to waive any right, penalty, remedy,  
39 forum, or procedure, including the right to file and pursue a civil  
40 action or complaint with, or otherwise notify, the commissioner



1 or any court or other public entity. The exercise of a person's right  
2 to refuse to waive any right, penalty, remedy, forum, or procedure,  
3 including a rejection of a contract requiring a waiver, shall not  
4 affect any otherwise legal terms of a contract or an agreement.

5 (14) This section shall not apply to any agreement to waive any  
6 right, penalty, remedy, forum, or procedure, including any  
7 agreement to arbitrate a claim or dispute, after a claim or dispute  
8 has arisen. Nothing in this section shall affect the enforceability  
9 or validity of any other provision of the contract.

10 (d) This division does not apply to a nonprofit organization that  
11 partners with an organization granted an exemption pursuant to  
12 subdivision (c) for the purpose of facilitating zero-interest loans,  
13 provided that the requirements of paragraphs (6) to (14), inclusive,  
14 of subdivision (c), and the following additional conditions are met:

15 (1) The partnership of each exempt organization and each  
16 partnering organization shall be formalized through a written  
17 agreement that specifies the obligations of each party. Each written  
18 agreement shall contain a provision establishing that the partnering  
19 organization agrees to comply with the provisions of this section  
20 and any regulations that may be adopted by the commissioner  
21 pursuant to this section. Each such agreement shall be provided  
22 to the commissioner upon request.

23 (2) Each partnering organization shall meet the requirements  
24 for federal income tax exemption under Section 501(c)(3) of the  
25 Internal Revenue Code and shall be organized and operated  
26 exclusively for one or more of the purposes described in Section  
27 501(c)(3) of the Internal Revenue Code.

28 (3) No part of the net earnings of the partnering organization  
29 shall inure to the benefit of a private shareholder or individual.

30 (4) Each exempt organization shall notify the commissioner  
31 within 30 days of entering into a written agreement with a  
32 partnering organization, on such form and in such manner as the  
33 commissioner may prescribe. At a minimum, this notification shall  
34 include the name of the partnering organization, the contact  
35 information for a person responsible for the lending activities  
36 facilitated by that partnering organization, and the address or  
37 addresses at which the organization facilitates lending activities.

38 (5) Upon a determination that a partnering organization has  
39 acted in violation of this section or any regulation adopted  
40 thereunder, the commissioner may disqualify that partnering

1 organization from performing services under this section, bar that  
2 organization from performing services at one or more specific  
3 locations of that organization, terminate a written agreement  
4 between a partnering organization and an exempt organization,  
5 and, if the commissioner deems such action to be in the public  
6 interest, prohibit the use of that partnering organization by all  
7 organizations granted exemptions by the commissioner pursuant  
8 to subdivision (c).

9 (6) The exempt organization shall include information regarding  
10 the loans facilitated by the partnering organization in the annual  
11 report required pursuant to paragraph (5) of subdivision (c).

12 (e) The commissioner may examine each exempt organization  
13 and each partnering organization for compliance with the  
14 provisions of this section, upon reasonable notice to the party  
15 responsible for the lending activities facilitated by that  
16 organization. Any organization so examined shall make available  
17 to the commissioner or his or her representative all books and  
18 records requested by the commissioner related to the lending  
19 activities facilitated by that organization. The cost of any such  
20 examination shall be paid by the exempt organization.

21 (f) This section shall not apply to any loan of a bona fide  
22 principal amount of two thousand five hundred dollars (\$2,500)  
23 or more as determined in accordance with Section 22251. For  
24 purposes of this subdivision, “bona fide principal amount” shall  
25 be determined in accordance with Section 22251.

26 SEC. 2. Section 22067 is added to the Financial Code, to read:

27 22067. (a) On or before July 1 of each year, the commissioner  
28 shall post a report on the department’s Internet Web site  
29 summarizing the information described in subdivision (b). The  
30 information disclosed to the commissioner for the commissioner’s  
31 use in preparing the report described in this section is exempted  
32 from any requirement of public disclosure by paragraph (2) of  
33 subdivision (d) of Section 6254 of the Government Code.

34 (b) The report required by this section shall specify the time  
35 period to which the report corresponds, and shall include, but not  
36 be limited to, the following for that time period:

37 (1) The number of organizations that applied for exemptions  
38 pursuant to subdivision (c) of Section 22066, and the number of  
39 organizations that entered into partnerships with exempt  
40 organizations in accordance with subdivision (d) of Section 22066.

1 (2) The number of organizations granted exemptions and the  
2 types of exemptions granted.

3 (3) The reason or reasons for denying applications for  
4 exemptions, if applicable. This information shall be provided in a  
5 manner that does not identify the entity or entities denied.

6 (4) The number of borrowers who applied for loans through  
7 exempt or partnering organizations, the number of borrowers  
8 granted loans facilitated by exempt or partnering organizations,  
9 the total amount loaned, and the distribution of loan lengths upon  
10 origination.

11 (5) The number of borrowers who obtained more than one loan  
12 through an exempt or partnering organization and the distribution  
13 of the number of loans per borrower.

14 (6) Of the number of borrowers who obtained more than one  
15 loan facilitated by an exempt or a partnering organization, the  
16 percentage of those borrowers whose credit scores increased  
17 between successive loans, based on information from at least one  
18 major credit bureau, and the average size of the increase.

19 (7) The income distribution of borrowers upon loan origination,  
20 including the number of borrowers who obtained at least one loan  
21 and who resided in a low-to-moderate-income census tract at the  
22 time of their loan application.

23 (8) The number of borrowers who obtained loans facilitated by  
24 an exempt or a partnering organization for the following purposes,  
25 based on borrower responses at the time of their loan applications  
26 indicating the primary purpose for which the loan was obtained:

27 (A) Medical.

28 (B) Other emergency.

29 (C) Vehicle repair.

30 (D) Vehicle purchase.

31 (E) To pay bills.

32 (F) To consolidate debt.

33 (G) To build or repair credit history.

34 (H) To finance a purchase of goods or services other than a  
35 vehicle.

36 (I) For other than personal, family, or household purposes.

37 (J) Other.

38 (9) The number of borrowers who self-report that they had a  
39 bank account at the time of their loan application, the number of  
40 borrowers who self-report that they had a bank account and used

1 check-cashing services, and the number of borrowers who  
2 self-report that they did not have a bank account at the time of  
3 their loan application.

4 (10) ~~(A)~~ The performance of loans under Section 22066, as  
5 reflected by all of the following:

6 ~~(i)~~

7 (A) The number and percentage of borrowers who experienced  
8 at least one late payment lasting between 7 and 29 days and who  
9 subsequently brought his or her loan current, and the distribution  
10 of principal loan amounts corresponding to those late payments.

11 ~~(ii)~~

12 (B) The number and percentage of borrowers who experienced  
13 at least one late payment lasting between 30 and 59 days and who  
14 subsequently brought his or her loan current, and the distribution  
15 of principal loan amounts corresponding to those late payments.

16 ~~(iii)~~

17 (C) The number and percentage of borrowers who experienced  
18 at least one late payment lasting 60 days or more and who  
19 subsequently brought his or her loan current, and the distribution  
20 of principal loan amounts corresponding to those late payments.

21 ~~(iv)~~

22 (D) The number and percentage of borrowers who experienced  
23 at least one late payment of greater than seven days and who did  
24 not subsequently bring his or her loan current.

25 ~~(v)~~

26 (E) Among loans that were ever late for seven days or more,  
27 the average number of times borrowers experienced a late payment  
28 of seven days or more.

29 (11) The number and types of violations of Section 22066 by  
30 exempt organizations, which were documented by the  
31 commissioner.

32 (12) The number and types of violations of Section 22066 by  
33 partnering organizations, which were documented by the  
34 commissioner.

35 (13) The number of times the commissioner suspended or  
36 revoked an exemption granted to an exempt organization pursuant  
37 to paragraph (4) of subdivision (c) of Section 22066 and the  
38 number of times a partnering organization was sanctioned by the  
39 commissioner pursuant to paragraph (5) of subdivision (d) of  
40 Section 22066.

1 (14) The number of complaints received by the commissioner  
2 about an exempt organization or a partnering organization, and  
3 the nature of those complaints.

4 (15) Recommendations, *if any*, for improving the program.

5 SEC. 3. The Legislature finds and declares that Section 2 of  
6 this act imposes a limitation on the public's right of access to the  
7 meetings of public bodies or the writings of public officials and  
8 agencies within the meaning of Section 3 of Article I of the  
9 California Constitution. Pursuant to that constitutional provision,  
10 the Legislature makes the following findings to demonstrate the  
11 interest protected by this limitation and the need for protecting  
12 that interest:

13 In order to allow the Commissioner of Business Oversight of  
14 the Department of Business Oversight to fully accomplish his or  
15 her goals, it is imperative to protect the interests of those persons  
16 submitting information to the department to ensure that any  
17 personal or sensitive business information that this act requires  
18 those persons to submit is protected as confidential information.